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No. 87-980

In the Supreme Court of the United States

OCTOBER TERM, 1987

IN THE MATTER OF B.B. AND G.B., MINORS.
MISSISSIPPI BAND OF CHOCTAW INDIANS,
Appellant,

vs.

ORREY CURTISS HOLYFIELD, VIVIAN JOAN HOLYFIELD, J.B., NATURAL MOTHER AND W.J., NATURAL FATHER,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

APPELLEES' BRIEF

EDWARD O. MILLER
(Counsel of Record)
MILLER & SMITH
1922 23rd Avenue
Gulfport, Mississippi 39501
(601) 868-7701
Counsel for Appellees

December, 1988

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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STATEMENT

Twin babies were born to J.B. on December 29, 1985 in Gulfport, Harrison County, Mississippi. The children were born out of wedlock to J.B. and W.J., the putative father, who are both full-blood Choctaw Indians. A petition for adoption was filed on January 16, 1986, by the Holyfields, who were joined in such by the natural mother. A consent to adoption form was executed by J.B., the natural mother, on January 10, 1986. A consent to adop-

tion form and reaffirmation thereof were filed by W.J., the putative father, on January 11, 1986, and June 13, 1986, respectively.

The Chancellor in the lower State Court issued the decree of adoption on January 28, 1986.

The Mississippi band of Choctaw Indians filed a motion to vacate and set aside the final decree of adoption on March 31, 1986.

Affidavits again reaffirming their consent to the adoption were filed by the natural parents, Appellees on May 31, 1986, and June 9, 1986. The content of these forms stated specifically that 1) the natural parents reaffirmed their consent to the adoption with 2) the adoptive parents to be the Holyfields 3) the children were born in Gulfport, Mississippi, and at no time ever been on the Choctaw Indian reservation in Neshoba County, Mississippi; 4) it is the desire of the natural parents that the children remain in Gulfport and with the Holyfields and that the proceeding be held in the Chancery Court of Harrison County, Mississippi.

On July 14, 1986 the lower Court overruled the band's motion and entered its decree on July 30, 1986.

The Mississippi Supreme Court then decided on August 5, 1987, that the Indian twins have never resided outside of Harrison County, Mississippi and were voluntarily surrendered and legally abandoned by the natural parents to the adoptive parents and it is undisputed that the parents went to considerable efforts to prevent the children from being placed on the reservation as the mother arranged for their birth and adoption in Gulfport Memorial Hospital, Harrison County, Mississippi. The

Court further held that the domicile of B.B. and G.B. has been and continues to be Harrison County, Mississippi and the Court therein exercised proper jurisdiction over the children's adoption proceedings. The Mississippi Supreme Court further found that the proceedings in lower Court actually escaped applicable Federal law and child welfare but the Chancellor insured that the minimum Federal standards were met when the Court chose to exercise jurisdiction. The Mississippi Supreme Court noted the submission of various forms filed by the natural parents affirming and reaffirming their consent to the adoption. Almost three years has past since the decree of adoption was issued in the lower State Court in Mississippi, and as of the date of the writing of this brief no objection has yet been filed by either of the natural parents. Both natural parents are Appellees in this case which indicates their ongoing consent to the adoption.

SUMMARY OF ARGUMENT

Appellees would show that the Mississippi band of Choctaw Indians lacks standing to contest the adoption of the Choctaw children subject of this appeal as Article III, Section 2 of the Constitution of the United States as interpreted by this Court requires for purposes of standing, some actual threat and injury amenable to judicial remedy. Appellees would further submit that appellant has failed to show any reason for this Court to grant a Writ of Certiorari as there are no conflicts within the Circuits, there is not a matter before this Court which has not been or should be decided, and the decision in the Mississippi Courts is not in conflict with prior decisions of this Court and not in conflict with Indian rights as defined under the Indian Child Welfare Act of 1978.

Mississippi Courts have jurisdiction over the adoption of Indian children specified in Indian Child Welfare Act 1978, Pub. L. 95-608 specifically 25 U.S.C., Section 1913, which provides the minimum Federal standards for voluntary termination of parental rights for adoption purposes. If there were not a difference between a voluntary proceeding and an involuntary proceeding, an involuntary proceeding being defined under 25 U.S.C., Section 1912 there would be no reason for Congress to adopt or draw a distinction between Sections 1912 and 1913 of 25 U.S.C. To date, the natural parents, who are Appellees herein, have entered no objection to this proceeding. 25 U.S.C., Section 1911 (a) states that an Indian tribe shall have jurisdiction exclusive as to any state or any child custody proceeding involving an Indian child who resides or is domiciled in a reservation of such tribe. In the instant case the children have never resided or have never been domiciled on the reservation. Section 1911 (b) of the ICWA provides that any State Court proceeding for the foster care placement of or termination of parental rights to an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the Court, absent good cause to the contrary, should transfer such proceeding to the jurisdiction of the tribe *absent objection by the parent*. (Emphasis added) 25 U.S.C., Section 1913 permits application of State law to the adoption of Indian children not domiciled or residing on a reservation. Further, Section 1913, Subsection (b) provides that any parent may withdraw consent to the placement of their child under State law at any time and upon such withdrawal the child shall be returned to the parent or Indian custodian Section 1913 being merely and purely a voluntary proceeding requiring the consent of the natural parents.

The Indian Child Welfare Act of 1978, herein referred to as ICWA does not expressly define how domicile is to be established. The Bureau of Indian Affairs' guidelines for implementing the ICWA state that definitions of domicile were not included in the Act or the guidelines because these terms are well defined under existing State law. There is no indication that these State law definitions tend to undermine in any way the purposes of the Act. The Mississippi Supreme Court in this case has clearly stated that the domicile and residence of the children subject of this proceeding from the very first day of their lives has been that of the Holyfields in Harrison County, Mississippi.

There is no Federal definition of domicile or residence and the Mississippi Supreme Court in this case decided that the domicile of the two Indian children subject of this proceeding was from the first day of their lives and to the present date, Harrison County, Mississippi as neither of said children have ever spent one second of their lives on a reservation.

ARGUMENT

I.

Whether or Not This Court Has Jurisdiction Over 87-980 As an Appeal.

It appears in this Argument that Appellant is questioning the validity and the constitutionality of the Mississippi Adoption Act, Mississippi Code Anno., Section 93-17-3 to the adoption of twin Indian infants subject of this case. Appellees would show that in order for Appellant to preserve this question on appeal to this Court, the issue would have had to have been raised in the lower State Court proceedings and it was not. Appellant would also have this Court think that the adoption of Indian children can only take place through the Tribal Courts and the Tribal Courts have exclusive jurisdiction over the adoption of all Indian children. This position by Appellant, is totally unsupported by law and facts. Exclusive jurisdiction over the adoption and placement of Indian children is only conferred on the Tribal Courts under 25 U.S.C., Section 1911 which confers exclusive jurisdiction to the Indian tribe over any child custody proceeding involving an Indian child *who resides or is domiciled within the reservation* of such tribe. (Emphasis added) Appellees would point out that Section 1911 (b) states that in any State Court proceeding for the foster care placement of or termination of parental rights to an Indian child not domiciled or residing in a reservation of the Indian child's tribe, the Court in the absence of good cause to the contrary, should transfer such proceeding to the jurisdiction of the tribe, *absent objection by the parent*. (Emphasis added) 25 U.S.C., Section 1913

gives State Courts jurisdiction in voluntary proceedings as it specifically provides in Section 1913 (c) that proceedings for the termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be and the child shall be returned to the parent. Under Section 1913 (d), after the entry of a final decree of adoption of an Indian child in any State Court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the Court to vacate any such decree within two years after the date of the decree.

In support of Appellees' Argument Number One, and in opposition to Appellant's Argument Number One, Appellees would re-adopt their Motion to Dismiss Appeal and to Deny a Petition for a Writ of Certiorari which is on file at this time in Cause 87-980.

II.

Whether or Not Mississippi Courts Lack Jurisdiction Over Adoptions of Indian Children Whose Natural Parents Are Residents of and Domiciled on an Indian Reservation.

Appellees would agree that in Section 101 (a) of the Indian Child Welfare Act of 1978, Pub. L. 95-608, 25 U.S.C., Section 1911, that the Tribal Court would have exclusive jurisdiction over any Indian children domiciled or residing within its boundaries and reservation, however, such is not the case at hand. The twins in question were born in Harrison County, Mississippi in

Gulfport Memorial Hospital and have resided in Harrison County, Mississippi since the day of their birth through the date of this brief and have never "set foot" on any reservation. Appellees would again point out that the adoption proceeding before this Court was a voluntary proceeding as provided for under 25 U.S.C., Section 1913 and all of the minimum standards provided for in said section were complied with by Appellees. The Mississippi Supreme Court decision, dated August 5, 1987, held that Indian twins subject to this proceeding have never resided outside of Harrison County, Mississippi and were voluntarily surrendered and legally abandoned by the natural parents to the adoptive parents and it is undisputed that the natural parents went to some efforts to prevent the children from being placed on the reservation as the mother arranged for their birth in Gulfport Memorial Hospital, Harrison County, Mississippi and for their adoption in the Harrison County Court. The domicile of said twins has been and continues to be Harrison County, Mississippi and the lower State Court insured that the minimum Federal standards would be met as set forth in 25 U.S.C., Section 1913 in any event when the Court chose to exercise jurisdiction. The parents continued their consent by submitting reaffirmations of their consent to the adoption well after said adoption was final.

J.B. and W.J., natural parents and Appellees voluntarily invoked the jurisdiction of the Harrison County, Mississippi Courts.

In *Desjarleit v. Desjarleit*, 379 N.W.2d 139 (Minn. App. 1985), the father of the Indian children filed a petition for custody of his two children in a Minnesota County Court while both he and his wife and two children were all enrolled members of, and all residing on the Red Lake

Indian Reservation. After an unfavorable decision to him in lower Court he appealed to the Minnesota Appeals Court on the grounds that the State Court of Minnesota did not have jurisdiction to resolve child custody matters when the parties and their children are enrolled members of the Red Lake Indian Reservation residing on the reservation. The Court of Appeals affirmed the lower Court's decision and stated:

> "While the above principle (States have no authority to govern Indians within the boundaries of an Indian reservation) be well established, an aspect of this case makes application of the general rule inappropriate. Stuart (the father) *voluntarily* invoked the jurisdiction of the County Court when he filed his petition for dissolution."

The Minnesota Court of Appeals cited *In Re*: *Bertleson,* 617 P.2d 121, 125 (Mont. 1980) supporting their opinion that a State Court's jurisdiction can be voluntarily invoked by an Indian parent who filed a petition in this Court asking for a determination.

As in both *Bertleson* and *Desjarleit, supra,* the jurisdiction of the Chancery Court of Harrison County, Mississippi was voluntarily invoked by filing of adoption petition by the Indian mother of the children herein and in so doing left the adoption issue in the hands of the State Court to be decided accordingly. *In the Matter of S.Z., S.D.*, 325 N.W.2d 53 (S.D. 1982) the Supreme Court of South Dakota held that where the parents of an Indian child consented to the jurisdiction of a Circuit Court in South Dakota on neglect proceedings then jurisdiction remained with the State Court as opposed to the transfer of jurisdiction to the Tribal Court. This was done in

spite of the fact that the Indian children were enrolled members of the Rose Bird Sioux tribe and the parents later appeared to set aside their consent to the proceedings in the State Court. Appellees would further show *In the Matter of Duryea,* 115 Ariz. 86, 583 P.2d 885 (1977), the Supreme Court of Arizona cited *Wisconsin Potowatomies, Etc., supra,* and *Wakefield v. Littlelight, supra,* as not being applicable to the case before them where the Indian children "had been voluntarily and purposefully removed therefrom and placed with petitioners off the reservation. The conduct of the parents in leaving the children and abandoning them . . . took place completely off the reservation." In the instant case, the Mississippi Supreme Court stated that in its earlier decision, *Stubbs v. Stubbs,* 211 So.2d 821 (Miss. 1968) that domicile is determined by physical presence, declaration of intent, and other relevant facts and circumstances. In the case at bar, said Indian children never resided outside of Harrison County, Mississippi, were voluntarily surrendered and legally abandoned by the natural parents to the adoptive parents, and is undisputed that the parents went to some efforts to prevent the children from being placed on the reservation as the mother arranged for their birth and adoption in Gulfport Memorial Hospital, Harrison County, Mississippi. Further, both parents executed consent and reaffirmation of their consent specifically stating that they wished for the matter to be heard in the Chancery Court of Harrison County, Mississippi and that the Holyfields be allowed to adopt said children.

III.

Whether or Not Mississippi Courts' Requirements of Physical Presence Within and Parental Consent to Children's Acquisition of Their Parents' Residence and Domicile Unlawfully Infringe Upon the Special Federal/Tribal Relationship When Applied to Indian Children of Reservation Parents.

Appellant weakly attempts to discredit the ruling of the Mississippi Supreme Court by creating the term "forked jurisprudence." In labeling the Mississippi Supreme Court's rationale in support of their ruling in the instant case, Appellant attempts to support its "forked jurisprudence" theory by pointing out a conflict in cases decided by the Mississippi Supreme Court. Appellant's theory deserves no more attention than it has already been given. It will suffice to say that the final arbitrator of the definition of domicile in the State of Mississippi is the Mississippi Supreme Court. In *Stubbs, supra,* the Mississippi Supreme Court gave its criteria for determining domicile and used this criteria and rationale in the case at bar.

Appellant heavily relies on the case of *Matter of Adoption of Halloway,* 732 P.2d 962 (Utah 1986). Appellees would show that *Halloway* supports more strongly the position of Appellees than it does the Appellant. In *Halloway,* the State Supreme Court of Utah stated,

> "the ICWA does not expressly define how domicile is to be established. The Bureau of Indian Affairs' guidelines for implementing the ICWA, however, states that definitions (of domicile) were not included (in the Act or the guidelines) because these terms are well defined under existing State law. There

is no indication that these State law definitions tend to undermine, in any way, the purposes of the ICWA." (Emphasis added)

44 Federal Register 67-583, 67-585 (1979) (not codified). The Mississippi Supreme Court applied its State definition of domicile in this case. The fact that the children never resided on the reservation is undisputed. How Appellant can argue that the definition of domicile must be decided on a Federal issue and not a State issue is beyond Appellees' comprehension as the ICWA itself does not define domicile. See *Halloway, supra*. Appellant is asking this Court to decide the issue of domicile based on a definition rendered by the Supreme Court of the State of Utah. In *Halloway, supra,* an Indian child was removed from the reservation by the mother and placed in the home of foster parents. (Emphasis added) Again, as Appellees have urged from the very initial beginnings of this case in the lower State Courts, none of the cases cited by Appellant apply to the facts of this case as 1) the Indian children in this case have never resided on the Choctaw reservation and 2) both natural parents consented to this proceeding in the State Court of Harrison County and expressly objected to the transfer of that case to the Tribal Court and consented to the adoption of the children by the Holyfields (JA 18, 19, 20, 21), and 3) at no stage of this proceeding has either of the natural parents objected to the adoption of these children by the Holyfields. Also, in *Halloway, supra,* Chief Justice Stuart concurring in the result states,

"Certainly State Courts must, and do have jurisdiction over adoption proceeding of Indian children in some cases . . . ."

In the dissenting opinion in the *Halloway* case Justice Howe states,

"Majority opinion concedes that the evidence supports the determination of the Trial Court that Cecelia (mother) tended to abandon her child . . . . Majority opinion states that the ICWA does not expressly define how domicile is established under the Act. It accepts the guidelines of the Bureau of Indian Affairs for implementing ICWA, which states the definitions of domicile were not included in the Act because these terms are well-defined under existing State law. There's no indication that these State law definitions tend to undermine, in any way, the purposes of the Act. However, contrary to the above statement, the majority then attempts to demonstrate how State definitions do undermine the Act, and concludes that Utah's common law of domicile is preempted by the ICWA. I cannot accept that reason. I believe that the Bureau of Indian Affairs guideline means exactly what it says and that the Trial Court properly applied Utah case law in domicile . . . . Much like students and others who come and go, the domicile of Indians must be determined on an individual case basis. It is frequently pointed out that Americans are a mobile nation. Our Indian people are no exception. Indian people are perhaps even more mobile because of the fact that it is increasingly difficult for them to make a living within the confines of the reservations."

Again, under 25 U.S.C., Section 1913, the adoption proceeding in the case at bar was a voluntary proceeding. Section 1913 permits application of State law and has

its own system of "checks and balances" for if one of the parents of the Indian child objects during any stage of the proceeding prior to the entry of the final decree, then the State Court must return custody of the Indian child to the parent objecting.

IV.

Whether or Not the Definition of Residence or Domicile of Indian Children for Purposes of the Indian Child Welfare Act Turns on a Federal Rather Than a State Definition.

There is no Federal definition of domicile. There is no definition of domicile provided for in the ICWA. Again, citing *Halloway, supra*, the Supreme Court of Utah specifically stated,

> "The ICWA does not expressly define how domicile is to be established. The Bureau of Indian Affairs' guidelines for implementing the ICWA, however, state that definitions (of domicile) were not included (in the act or the guidelines) because these terms are well-defined under existing State law. (Emphasis added) There is no indication that these State law definitions tend to undermine, in any way, the purposes of the act."

The Mississippi Supreme Court in the case at bar is the final arbitrator for the definition of domicile as it applied to the facts in this case. The U.S. Supreme Court has never overturned any known State law by a State Supreme Court. Appellees would humbly request that this great Court give full faith and credit to the decision of the Mississippi Courts and their definition of domicile in the case at bar.

Appellees will waste no time in distinguishing any of the cases cited in Appellant's Argument Number Four except to say that none of the cases cited have the same facts as this case. The facts in this case are unique; it is different from all other cases involving the adoption of Indian children in one of two ways: 1) On all cases found by Appellant and Appellees, there exist no cases wherein one or both of the natural parents failed to object to the termination of their parental rights at one stage of the proceeding, or 2) in all other cases the children at some point in their life physically resided on the reservation.

In the case at hand it should be brought to the Court's attention that under 25 U.S.C., Section 1912, in any involuntary proceeding in the State Court involving the termination of parental rights for foster care placement of an Indian child, the statute requires that not only shall the Court notify the parent or Indian custodian, but the Indian child's tribe by registered mail with return receipt requested of the pending proceedings and of their right of intervention in the State Court. However, under Section 1913, *supra*, which is a voluntary proceeding, there is no notice required to be given to the Indian tribe. This distinction in itself clearly shows that in a voluntary proceeding the State Courts are permitted to conduct voluntary termination of parental rights for adoptive placements of Indian children within notice to the tribe. Under Section 1913 (c) in the event that the parent of the Indian child should wish to withdraw their consent for any reason at any time prior to the entry of final decree, as the case may be, the child shall be returned to the parent. Also, Appellees would again point out to the Court's attention that under 25 U.S.C., Section 1911 (b)

which states in part "The State Court absent objection by either parent . . ." shall transfer the proceeding to the jurisdiction of the tribe. (Emphasis added) Upon review of the reaffirmation of consent and affidavit which were executed by the natural parents of the Indian children in this case one sees that both parents not only consented to the adoption and legally abandoned the children to the Holyfields, but specifically expressed their wish that the proceeding be held in the Chancery Court of Harrison County, Mississippi and not in the Tribal Court. (JA 18, 20) This not only gave the lower Court "good cause" but invoked the jurisdiction of the lower State Court and registered the parents' objection to this proceeding being held anywhere except in the Chancery Court of Harrison County, Mississippi.

CONCLUSION

Appellees submit that no Indian family was "broken up" as this was a voluntary proceeding when the children in this case were placed with the Holyfields for adoption by the natural parents. The natural mother and father of said children were not married, and in fact the father was married to another woman. In this case the evidence is clear that the parents went to great efforts to 1) place the children with the Holyfields for adoption and 2) invoke the jurisdiction of the Chancery Court of Harrison County, Mississippi for the voluntary proceeding. To deny these Indian parents their right to place their children for adoption with the Holyfields and to deny them access to the State Courts would be to deny them due process guaranteed to all by our State and Federal Constitutions regardless of race. The purpose of the

ICWA is a good one - one designed to prevent an abuse of not only the rights of Indian children but their parents as well. This case is certainly not a case of abuse as the adoption was arranged by the mother with full consent of both natural parents. The natural mother of said children related to this writer prior to the lower State Court proceeding that if her children were not adopted by the Holyfields that they would be placed with five to seven other children on the reservation in a foster home for the purpose of her tribe receiving additional Government subsidies. She further stated to this writer that she hoped her children would have an opportunity in life and would be loved and nurtured by parents who were able to care for them. The mother also knew that no roots would be disturbed because Mr. Orrey Holyfield's paternal grandmother was a full-blooded Choctaw Indian.

Respectfully submitted,

EDWARD O. MILLER
(Counsel of Record)
MILLER & SMITH
1922 23rd Avenue
Gulfport, Mississippi 39501
(601) 868-7701
Counsel for Appellees

MICHAEL G. PRESTIA
1708 23rd Avenue
Gulfport, Mississippi 39501
On the Brief

December, 1988

APPENDIX TO APPELLEES' BRIEF

SUBCHAPTER I - CHILD CUSTODY PROCEEDINGS

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an

Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the

parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceedings.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

§ 1913. Parental rights, voluntary termination

(a) Consent; record, certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack: vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provision of this subsection unless otherwise permitted under State law.

§ 93-17-3. Who may be adopted-who may adopt-venue of adoption proceedings-change of name.

Any person may be adopted in accordance with the provisions of this chapter in term time or in vacation by an unmarried adult or by a married person whose spouse joins in the petition, provided that the petitioner or petitioners shall have resided in this state for ninety (90) days preceding the filing of the petition, unless the petitioner or petitioners, or one of them be related to the child within the third degree according to civil law, in which case such restriction shall not apply. Such adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child shall have been surrendered by a person authorized to so do. The petition shall be accompanied by a doctor's certificate showing the physical and mental condition of the child to be adopted and a sworn statement of all property, of

any owned by the child. Should the doctor's certificate indicate any abnormal mental or physical condition or defect, such condition or defect shall not in the discretion of the chancellor bar the adoption of the child if the adopting parent or parents shall file an affidavit stating full and complete knowledge of such condition or defect and stating a desire to adopt the child, notwithstanding such condition or defect. The court shall have the power to change the name of the child as a part of the adoption proceedings. The word "child" herein shall be construed to refer to the person to be adopted, though an adult.